IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 515 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVUSINH D CHAUHAN

Versus

NILESHKUMAR MOHANLAL JOSHI

Appearance:

MR BB NAIK for Petitioner

MR SM PIRZADA for Respondent No. 1

MR MA BUKHARI, ADDL. PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/08/2000

ORAL JUDGEMENT

List has been revised thrice. None appears for the revisionist. Shri M.A. Bukhari for respondent no.2 - State of Gujarat has been heard and the impugned order

has been examined.

2 The brief facts giving rise to this revision are that on 10.10.1996 the complainant - respondent no.1 filed a complaint against the revisionist and six other persons which was registered as Inquiry Case No.45 of 1996. The said complaint was filed for offences punishable u/s 323, 504, 143, 147, 352 and 506(2) of the Indian Penal Code. The said complaint was heard by the learned Magistrate on 10.10.1996. The revisionist who was one of the accused is a Police Officer. The learned Magistrate after recording the statement u/s 200 of the Code of Criminal Procedure decided to hold the enquiry under Section 202 of the Code of Criminal Procedure. The statements of the complainant and his witnesses were recorded on 10.10.1996, 11.10.1996 and 18.10.1996. Vide order dated 19.10.1996 the Magistrate took cognizance u/s 323 and 504 of IPC against the revisionist and took cognizance of the offences punishable u/s 323, 504, 143, 147, 352 and 506(2) of IPC against the remaining six accused. Summons were ordered to be issued against the revisionist and non-bailable warrants against other accused persons. After this order was passed by the Magistrate, the revisionist moved an application being Criminal Misc. Application No.5763 of 1996 before this Court challenging the order of the Magistrate taking cognizance against the revisionist. The said application was admitted but at the time of final hearing direction was given by this Court to the revisionist to approach the trial Court by filing an application for discharge as laid down by the Apex Court in the case reported in AIR 1992 SC 2206. In compliance of this direction, application was moved by the revisionist praying discharge which was rejected through the impugned order dated 6.10.1997. It is this order which is under challenge in this revision.

3 The order was passed by the Magistrate after considering the prima facie material against the revisionist for proceeding against him. It was not a case where a routine order was passed against the revisionist. The complaint was filed u/s 323, 504, 143, 147, 352 and 506(2) of IPC. So far as revisionist's action is concerned, evidence was found against revisionist only under Sections 323 and 504 of IPC and not under other sections. At this stage, the learned Magistrate was required to consider whethere there is any prima facie material for proceeding against the revisionist and not that whether the material was sufficient for conviction of the revisionist. The same method was adopted by the learned Magistrate while

deciding the application exh.54 filed by the revisionist. In the impugned order also the learned Magistrate found that there was prima facie material and evidence against the revisionist for proceeding against him. If on such prima facie evidence and material and by observing that deffence documentary evidence was required to be proved during trial, the discharge application was dismissed by the Magistrate, no interference is required in this revision. The revision is accordingly dismissed.

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